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THE

RETURN OF REBELLIOUS STATES

TO THE UNION.

LETTER FROM HON. WILLIAM WHITING.

To the Union League of Philadelphia.

Gentlemen: Your letter has been received, requesting me to address the members of the Union League of Philadelphia, upon subjects connected with the present state of public affairs.

I have expected, until recently, to be able to comply with your invitation; but as my engagements will, for the present, place it out of my power to do so, I beg permission to make a few suggestions for your consideration upon the dangers of the country in the present crisis of public affairs.

Twofold War.

However brilliant the success of our military operations has been, the country is encompassed by dangers. Two wars are still waged between the citizens of the United States,—a war of Arms and a war of Ideas. Achievements in the field cannot much outstrip our moral victories. While we fix our attention upon the

checkered fortunes of our heroic soldiers, and trace their marches over hills and valleys, made memorable through all time by their disasters or their triumphs; while we are agitated by alternating hope and fear, by exultation and disappointment; while our brothers and sons rush joyfully to the post of danger and of honor, although the mourning weeds of the mother and sister record in the family the tearful glory of the fallen brave; while the movements of our vast armies, in all the pride, pomp and circumstance of glorious war, are watched with intense solicitude, let us not forget that there is another war, waged by men not less brave, for victories not less renowned than those which are won on battle-fields.

The deadliest struggle is between civilization and barbarism—freedom and slavery—republicanism and aristocracy—loyalty and treason.

The true patriot will watch with profound interest the fortunes of this intellectual and moral conflict, because the issue involves the country's safety, prosperity, and honor. If victory shall crown the efforts of those brave men who believe and trust in God, then shall all this bloody sacrifice be consecrated, and years of suffering shall exalt us among the nations; if we fail, no triumph of brute force can compensate the world for our unfathomable degradation.

Let us, then, endeavor to appreciate the difficulties of our present position.

Breakers Ahead.

Of several subjects, to which, were it now in my power, I would ask your earnest attention, I can speak of one only.

As the success of the Union cause shall become more

certain and apparent to the enemy, in various localities, they will lay down their arms, and cease fighting. Their bitter and deep-rooted hatred of the Government, and of all Northern men who are not traitors, and of all Southern men who are loyal, will still remain interwoven in every fibre of their hearts, and will be made, if possible, more intense by the humiliation of conquest and subjugation. The foot of the conqueror planted upon their proud necks will not sweeten their tempers; and their defiant and treacherous nature will seek to revenge itself in murders, assassinations, and all underhand methods of venting a spite which they dare not manifest by open war, and in driving out of their borders all loyal men. To suppose that a Union sentiment will remain in any considerable number of men, among a people who have strained every nerve and made every sacrifice to destroy the Union, indicates dishonesty, insanity, or feebleness of intellect.

The slaveholding inhabitants of the conquered districts will begin by claiming the right to exercise the powers of government, and, under their construction of State rights, to get control of the lands, personal property, slaves, free blacks, and poor whites, and a legalized power, through the instrumentality of State laws, made to answer their own purposes, to oppose and prevent the execution of the Constitution and laws of the United States, within districts of the country inhabited by them.

Thus, for instance: When South Carolina shall have ceased fighting, she will say to the President, "We have now laid down our arms; we submit to the authority of the United States Government. You may restore your custom-houses, your courts of justice; and, if we hold any public property, we give it up; we now have chosen Senators and Representatives, and demand their admission

to Congress, and the full establishment of all our State rights, and our restoration to all our former privileges and immunities as citizens of the United States."

This demand will be made by men who are traitors in heart; men who hate and despise the Union; men who never had a patriotic sentiment; men who, if they could, would hang every friend of the Government. But, for the sake of getting power into their own hands by our concession, which they could not obtain by fighting, and for the sake of avoiding the penalty of their national crimes, they will demand restoration to the Union under the guise of claiming State rights.

Consequences of being Outwitted by Rebels.

What will be the consequence of yielding to this demand?

Our public enemy will gain the right of managing their affairs according to their will and pleasure, and not according to the will and pleasure of the people of the United States.

They will be enabled, by the intervention of their State laws and State courts, to place and maintain themselves in effectual and perpetual opposition to the laws and Constitution of the United States, as they have done for thirty-five years past. They will have power to pass such local laws as will effectually exclude from the Slave States all Northern men, all soldiers, all free blacks, and all persons and things which shall be inconsistent with the theory of making slavery the corner-stone of their local government; and they may make slavery perpetual, in violation of the laws of the United States and proclamations of the President. They may continue the enforcement of those classes of laws against free speech and freedom of the press, which will forever exclude

popular education and all other means of moral, social, and political advancement.

They may send back to Congress the same traitors and conspirators who have once betrayed the country into civil war, and who will thwart and embarrass all measures tending to restore the Union by harmonizing the interests and the institutions of the people; and so, being introduced into camp, as the wooden horse into Troy, they will gain by fraud and treason that which they could not achieve by feats of arms. The insanity of State-rights' doctrines will be nourished and strengthened by admitting back a conquered people as our equals, and its baleful influences cannot be estimated!

To satisfy *them*, this solemn pledge of freedom, offered to the colored citizens by Congress and by the Proclamation, must be broken, and the country and the Government must be covered with unspeakable infamy, so that even foreign nations might then justly consider us guilty of treachery to the cause of humanity and civilization.

Suppose, to-day, the rebellion quelled, and this question put, "Will you now give to your enemy the power of making your laws?"

Eastern Virginia, Florida, and Louisiana are now knocking at the door of Congress for admission into the Union. Men come to Washington, chosen by a handful of associates, elevated by revolution, to unaccustomed dignity, representing themselves as Union men, and earnest to have State rights bestowed on their constituents.

If their constituents are clothed with the power to constitute a State, into whose hands will that power fall?

Beware of committing yourselves to the fatal doctrine of recognizing the existence, in the Union, of States which have been declared by the President's proclama-

tion to be in rebellion. For, by this new device of the enemy—this new version of the poisonous State rights doctrine—the Secessionists will be able to get back by fraud what they failed to get by fighting. Do not permit them, without proper safeguards, to resume in your counsels, in the Senate and in the House, the power which their treason has stripped from them.

Do not allow old States, with their Constitutions still unaltered, to resume State powers.

Be true to the Union men of the South; not to the designing politicians of the Border States. The rebellious districts contain ten times as many traitors as loyal men. The traitors will have a vast majority of the votes. Clothed with State rights under our Constitution, they will crush out every Union man by the irresistible power of their legislation. If you would be true to the Union men of the South, you must not bind them hand and foot, and deliver them over to their bitterest enemies.

State Rights in Civil War.

Beware of entangling yourselves with the technical doctrine of forfeitures of State rights, as such doctrines admit, by necessary implication, the operation of a code of laws, and of corresponding civil rights, the existence of which you deny.

The solution of all our difficulty rests in the enforcement against our public enemy of our belligerent rights of civil war.

Attitude of the Government, in the Beginning of the War, towards the Rebels, and towards Loyal Men in Rebel Districts.

When the insurrection commenced by illegal acts of Secession, and by certain exhibitions of force against the Government, in distant parts of the country, it was

supposed that the insurgents might be quelled, and peace restored, without requiring a large military force, and without involving those who did not actively participate in overt acts of treason.

Hence the Government, relying upon the patriotism of the people, and confident in its strength, exhibited a generous forbearance towards the insurrection.

When, at last, 75,000 of the militia were called out, the President, still relying upon the Union sentiment of the South, announced his intention not to interfere with loyal men; but, on the contrary, to regard their rights as still under the protection of the Constitution. The action of Congress was in accordance with this policy. The war waged by this Government was then a personal war, a war against rebels; a war prosecuted in the hope and belief that the body of the people were still friendly to the Union, who, temporarily overborne, would soon right themselves by the aid of the army. Hence Congress declared and the President proclaimed that it was not their object to injure loyal men, or to interfere with their rights or their domestic institutions.

The Progress of Events Changed the Character of the War, and Required the Use of More Effective War Powers.

This position of the Government toward the rebellious States was forbearing, and magnanimous, and just, while the citizens thereof were generally loyal. But the revolution swept onward. The entire circle of the Southern States abandoned the Union, and carried with them all the Border States which they could influence or control.

Having set up a new government for themselves; having declared war against us; having sought foreign aid; having passed acts of non-intercourse; having seized public property, and made attempts to invade

States which refused to serve their cause; having raised and maintained large armies and an incipient navy; assuming, in all respects, to act as an independent, hostile nation at war with the United States—claiming belligerent rights as an independent people alone could claim them, and offering to enter into treaties of alliance with foreign countries, and treaties of peace with ours—under these circumstances they were no longer merely insurgents and rebels, but became a belligerent public enemy. The war was no longer against "certain persons" in the rebellious States. It became a territorial war; that is to say, a war by all persons situated in the belligerent territory against the United States.

Consequences Resulting from Civil Territorial War.

If we were in a war with England, every Englishman would become a public enemy irrespective of his personal feelings towards the United States. However friendly he might be to us, his ships on the sea would be liable to capture; himself would be liable to be killed in battle, or his property, situated in this country, would be subject to confiscation.

By a similar rule of the law of nations, whenever two nations are at war, every subject of one belligerent nation is a public enemy of the other.

An individual may be a personal friend, and at the same time a public enemy to the United States. The law of war defines international relations.

When the civil war in America became a territorial war, every citizen residing in the belligerent districts became a public enemy, irrespective of his private sentiments, whether loyal or disloyal, friendly or hostile, Unionist or Secessionist, guilty or innocent.

As public enemies, the belligerents have claimed to be

exchanged as prisoners of war, instead of admitting our right to hang them as murderers and pirates. As public enemies they claim the right to make war upon us, in plain violation of many of the obligations they would have admitted, if they acknowledged the obligations or claimed the protection of our Constitution.

If they had claimed any State rights, under our Constitution, they would not have violated every one of the provisions thereof, limiting the powers of States. Asserting no such rights, they claim immunity from all obligations as States, or as a people—to this Government or to the United States.

When did the Rebellion become a Territorial War?

This question has been settled by the Supreme Court of the United States, in the case of the Hiawatha; decided on the 9th of March, 1863. In that case, which should be read and studied by every citizen of the Union, the members of the Court differed in opinion as to the time when the war became territorial. The majority decided that, when the fact of general hostilities existed, the war was territorial, and the Supreme Court was bound to take judicial cognizance thereof. The minority argued that, as Congress alone had power to declare war, so Congress alone has power to recognize the existence of war; and they contended that it was not until the act of Congress of July 13, 1861, commonly called the Non-Intercourse Act, that a state of civil, territorial war was legitimately recognized. All the Judges agree in the position, "that since July 13, 1861, there has existed, between the United States and the Confederate States, civil, territorial war."

What are the Rights of the Public Enemy since the Rebellion became a Territorial Civil War.

The Supreme Court have decided, in the case above-named, in effect:

"That since that time the United States have full belligerent rights against all persons residing in the districts declared by the President's proclamation to be in rebellion."

That the laws of war, "*whether that war be civil or* "inter gentes, *converts every citizen of the hostile State* "*into a public enemy, and treats him accordingly, what-*"*ever may have been his previous conduct.*"

That all the rights derived from the laws of war may now, since 1861, be lawfully and constitutionally exercised against all the citizens of the districts in rebellion.

Rights of Rebels as Persons, as Citizens of States, and as Subjects of the United States, are, according to the Constitution, to be Settled by the Laws of War.

Such being the law of the land, as declared by the Supreme Court, in order to ascertain what are the legal or constitutional rights of public enemies, we have only to refer to the settled principles of the belligerent law of nations or the laws of war.

Some of the laws of war are stated in the dissenting opinion in the case above-mentioned.

A state of foreign war instantly annuls the most solemn treaties between nations. It terminates all obligations in the nature of compacts or contracts, at the option of the party obligated thereby. It destroys all claims of one belligerent upon the other, except those which may be sanctioned by a treaty of peace. A civil territorial war has the same effect, excepting only that the sove-

reign may treat the rebels as subjects as well as belligerents.

Hence civil war, in which the belligerents have become territorial enemies, instantly annuls all rights or claims of public enemies against the United States, under the Constitution or laws, whether that Constitution be called a compact, a treaty, or a covenant, and whether the parties to it were States, in their sovereign capacity, or the people of the United States as individuals.

Any other result would be as incomprehensible as it would be mischievous. A public enemy cannot, lawfully, claim the right of entering Congress and voting down the measures taken to subdue him.

Why not? Because he is a public enemy; because, by becoming a public enemy, he has annulled and lost his rights in the Government, and can never regain them, excepting by our consent.

If the inhabitants of a large part of the Union have, by becoming public enemies, surrendered and annulled their former rights, the question arises, can they recover them? Such rights cannot be regained by reason of their having ceased to fight. The character of a public enemy, having once been stamped upon them by the laws of war, remains fixed until it shall have been by our consent removed.

To stop fighting does not make them cease to be public enemies, because they may have laid down their arms for want of powder, not for want of will. Peace does not restore the noble dead who have fallen a sacrifice to treason. Nor does it revive the rights once extinguished by civil, territorial war. The land of the Union belongs to the people of the United States, subject to the rights of individual ownership. Each person inhabiting those

sections of the country declared by the President's proclamation to be in rebellion, has the right to what belongs to a public enemy, and no more. He can have no right to take any part in our Government. That right does not belong to an enemy of the country, while he is waging war or after he has been subdued. A public enemy has a right to participate in, or to assume the Government of the United States only when he has conquered the United States. We find in this well-settled doctrine of belligerent law the solution of all questions in relation to State rights. After the inhabitants of a district have become public enemies they have no rights, either State or personal, against the United States. They are belligerents only, and have left to them only belligerent rights.

State Rights are not Appurtenant to Land.

Suppose that all the inhabitants living in South Carolina should be swept off, so that solitude should reign throughout its borders unbroken by any living thing; would the State rights of South Carolina still exist as attached to the land itself?

Can there be a sovereignty without a people, or a State without inhabitants? State rights, so far as they concern the Union, are the rights of persons, as members of a State, in relation to the General Government; and when the person has become a public enemy, then he loses all rights except the rights of war. And when *all* the inhabitants have (by engaging in civil, territorial war) become public enemies, it is the same, in legal effect, as though the inhabitants had been annihilated. So far as this Government is concerned, civil territorial war obliterates from districts in rebellion all lines of states or

counties; the only lines recognized by war are the lines which separate us from a public enemy.

Forfeiture not Claimed—the Right of Secession not Admitted, since Citizens may be deemed Belligerents and Subjects.

I do not place reliance upon the common law doctrine of forfeitures of franchises as applicable to this revolution, for forfeiture can be founded only upon the admission of the validity of the act on which forfeiture is founded.

Nor does the belligerent law, of civil, territorial war, whereby a public enemy loses his rights as a citizen, admit the right of Secession. It is not any vote or law of Secession that makes an individual a public enemy. A person may perpetrate crimes against municipal law, and may commit acts of hostility against Government, without being a public enemy. To be a personal enemy is not to be a public enemy to the country, in the eye of belligerent or international law. Whosoever engages in an insurrection is a personal enemy; but it is not until that insurrection has swelled into territorial war, that he becomes a public enemy.

It must also be remembered that the right of Secession is not conceded by enforcement of belligerent law, since in civil war a nation has the right to treat its citizens either as subjects or belligerents, or as both. Hence, while belligerent law destroys all claims of subjects engaged in civil war, as against the parent government, it does not release the subject from his duties to that government. By war, the subject loses his rights, but does not escape his obligations.

The inhabitants of the conquered districts will thus lose their right to govern us, but will not escape their obligations to obey us. Whatever rights are left to them